

CITY OF ROCKVILLE CONTRACT FOR ARTIST SERVICES
FOR CONSTRUCTION OF ARTWORK TO BE LOCATED AT THE
N. WASHINGTON ST. AND BEALL AVE. CORNER
ARCHITECTURAL NICHE

THIS AGREEMENT, entered into this ____ day of _____, 2008, by and between the MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation of the State of Maryland (hereinafter referred to as the "City"), 111 Maryland Avenue, Rockville, Maryland, and STUDIO WILLIAM COCHRAN, INC., (hereinafter referred to as "Artist").

WITNESSETH:

WHEREAS, the City's Art in Public Places Program as set forth in the Capital Improvements Program of the City of Rockville, -as recommended by the City Manager and approved by the Mayor and Council. requires the setting aside of certain funds for the purchase of artworks in or at public buildings, ~~and authorizes the City Manager to select artists, works of art and suitable sites for the place of the works of art;~~ and

WHEREAS, the City's Capital Budget Funds have been allocated for the selection, purchase and placement of artwork to be located at North Washington St. and Beall Ave. Corner (Architectural Niche), hereinafter referred to as the "project" or "Artwork"; and

WHEREAS, the Artist was ~~selected~~ recommended by the City Manager and approved by the Mayor and Council through procedures duly adopted by the City; and

WHEREAS, the Artist is able and desirous of performing such services.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES. The Artist agrees to design, fabricate and install a work of art substantially in accordance with the design attached hereto as Exhibit "A" (the "Artwork" or the

“Design”).

(a) Changes in Design. The following changes are specified in advance as minor changes to the Design that are permitted by the City:

(1) substitution of up to 6 (six) of the 28 photographs depicted in the Design if, in consultation with Peerless Rockville, Artist finds photos that Artist believes better represent site history, or if Artist is unable to secure clear reproduction permissions for images in the Design for the uses described herein and must substitute a photograph for that reason. The specific photos to be substituted must be approved by the City, through the City Manager, in consultation with the Mayor and Council, which approval shall not be unreasonably withheld. The City ~~Manager~~ will provide ~~his~~ its written approval or disapproval of a proposed substitute picture within ~~two- thirty (302) business~~ days of Artist's written request.

(2) substitution of Seneca for the Algonquian language;

(3) substitution of another female model (of substantially the same age) for the female model depicted in Exhibit A. The substitute model must be as colorfully dressed, and be depicted in substantially the same place in the composition, scale, pose, and lighting, as the female model specified in the previously approved Exhibit A.

(be) If the Artist submits for approval and the City ~~Manager~~ approves the minor changes requested pursuant to Paragraph 1(a)(1), the City shall promptly notify the Artist in writing, and Artist will be entitled to rely on such approval and proceed with work on the project under this Agreement.

(cd) If the City disapproves of the minor changes requested pursuant to Paragraph 1(a)(1), the City shall promptly notify the Artist in writing, and the Artist either shall continue to

fabricate the Artwork in substantial conformity with the Design, or shall, at his option, if the substitution is requested because the Artist is unable to secure necessary copyright permissions, terminate this Agreement.

2. PERFORMANCE OF SERVICES. Following receipt of written notice to proceed from the City Manager or his designated representative the Artist shall commence work on the project in sufficient time to complete (including installation) the Artwork on or before December 31, 2009 (the "Delivery Deadline"). The Delivery Deadline will be extended by the number of days required to obtain the City's approval of substituted photographs pursuant to Paragraph 1(a)(1).

3. COMPENSATION. The Artist shall receive compensation in the amount of Twenty-eight Thousand Dollars (\$28,000) to be paid as follows:

- (a) Three Thousand Eight-Hundred Dollars (\$3,800) upon execution of this Agreement.
- (b) Ten Thousand Dollars (\$10,000) upon the purchase of construction materials, hiring of laborers, and rental of equipment for the fabrication.
- (c) Ten Thousand Dollars (\$10,000) upon the purchase of construction materials, hiring of laborers and rental of equipment for the installation.
- (d) Four Thousand Two-Hundred Dollars (\$4,200) upon completion, installation and acceptance of the Artwork by the City.

4. CITY'S OBLIGATIONS.

- (a) The City shall perform its obligations in accordance with all terms and conditions in this Agreement.
- (b) The City shall be responsible for providing the Artist, at no expense to the Artist, a

list of required City permits, and other existing relevant data, if any, which is needed by Artist in order to perform.

(c) Site Preparation: The City shall prepare the Site by removing the brick veneer to re-expose the unfinished cinderblock, leaving the surface neat and clean, leaving finished edges and creating a smooth cinderblock surface. The Artist shall notify the City ninety (90) days in advance of installation so that the City will have time to prepare the site. Before beginning installation Artist shall inspect the prepared surface, with the bricks removed, and notify the City in writing that Artist accepts the surface for installation of the Artwork. Upon Artist's acceptance of the surface for installation of the Artwork, Artist assumes all responsibility for the condition of the surface.

(e) The City shall provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: ~~Copyright~~ © Studio William Cochran, Inc. 2009. ~~Artist shall provide the City with accurate copyright information.~~

5. COPYRIGHT. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., Sections 101, et seq., and all other rights in and to the Artwork except ownership and possession, except as such rights are limited by this Section 5. Since it is the intention of the parties that the Artwork in its final dimension shall be unique, the Artist hereby agrees not to make an exact duplicate or three-dimensional reproduction of the final Artwork or permit others to do so except by written permission of the City. The Artist hereby grants to the City and its assigns an irrevocable license to make photographs, drawings, and other two dimensional reproductions of the Artwork for non-commercial purposes without prior consent of the Artist, including but not limited to reproductions used in advertising, art books or art videos, brochures,

postcards, history books or history videos, media publicity, noncommercial reproductions in the City's portfolio of public art, catalogues or other similar publications. The Artist also grants to the City an irrevocable license to make postcards for the City's commercial purposes, subject to the Artist's approval of the reproduction of the Artwork on the postcard and the text printed on the postcard, which agrees to provide the Artist with a reasonable opportunity to supply the City with postcards depicting the Artwork for sale by City:approval will not be unreasonably withheld, conditioned, or delayed.- The City agrees not to distribute printed reproductions of the Work that are larger than 8" x 10", or that are framed. All reproductions of the Artwork by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © Studio William Cochran, Inc. 2009, ~~www.WilliamCochran.com~~.

6. GUARANTEE. The Artist does hereby guarantee that said Artwork shall be free from any and all defects of any kind and nature in material or workmanship, and the Artist shall provide the necessary materials and labor for, and shall bear any expenses in connection with repair of, such defects of which the artist is given written notice by the City within two years from the date of completion. The Artist will not be responsible for damage resulting from fire, vandalism or acts of God.

7. ORIGINAL WORK. The Artist warrants that this Artwork designed for purchase under this Agreement is a unique or original project of the Artist's creative efforts; that it is an edition of one, unless otherwise stated; and that it has not been nor will be accepted for sale or installed elsewhere.

8. LIABILITY. Artist shall indemnify, protect, defend and hold harmless the City and its subdivisions, officials, employees and agents (each a "Covered Person") from and against all

liabilities, obligations, losses, damages, judgments, costs or expenses, (including legal fees and costs of investigation) (“collectively “Losses”) arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist; or (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by the Artist. Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Artist.

9. INSURANCE. The Artist, at the time the work is installed on site until completion thereof at the Artist’s sole cost and expense, shall obtain, furnish and maintain in full force and effect a liability insurance policy to protect the City against any and all claims for personal and property injury, including death arising from the work, in the amount of Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The insurance policy shall remain in effect until one year after said work of art is accepted by the City and shall have the Mayor and Council of Rockville as named insured. A certificate of insurance shall be provided to the City verifying required insurance coverage.

10. RISK OF LOSS. The Artist shall bear the risk of loss or damage to the Artwork until the City’s final acceptance of the Artwork under Section 11. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage prior to the City’s final acceptance of the Artwork.

11. APPROVAL AND ACCEPTANCE.

(a) The Artist shall notify the City in writing when all services as required of both parties by this agreement have been completed in substantial conformity with the Design.

(b) Within five business days of receiving written notice of substantial completion of the Artwork the City, through the City Manager, in consultation with the Mayor and Council, shall notify the Artist of its final acceptance or rejection of the Artwork. The effective date of final acceptance shall be the date the City submits written notice the Artist of its final acceptance of the Artwork.

12. COMPLIANCE WITH LAWS. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.

13. SUBCONTRACTING. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance, or visual quality of the Artwork and shall be carried out under the personal supervision of the Artist. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor. The Artist shall not assign this Agreement without the written consent of the City.

14. CHANGES. All changes to this Agreement shall require a written agreement signed by all parties prior to any change.

15. TERMINATION. The City may, by written notice to the Artist, terminate this Agreement in whole or in part at any time, either for the City's convenience or because of the failure of the Artist to fulfill his contractual obligations.

If termination is for the convenience of the City, the Artist shall be entitled to the full Twenty-eight Thousand Dollars (\$28,000), less an amount equal to expenses anticipated to be incurred by the Artist at the time of execution of this contract but not yet incurred at the time of such termination per attached budget. If termination of the Agreement is due to the failure of the Artist to fulfill the Artist's contract obligations, the Artist shall remit to the City a sum equal to all payments (if any) made pursuant to this Agreement prior to termination.

16. DEATH OR INCAPACITY. If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist. However, nothing in this section 16 shall obligate the City to accept the Artwork.

(a) In the event of incapacity, the Artist shall assign the Artist's obligations and services under this Agreement to another artist provided that the City, in its sole discretion, approves of the new artist. If the parties cannot agree on another artist to complete the Artwork, the City may elect to terminate this Agreement. The Artist shall retain all rights under Articles 4(e) and 5. ~~The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © Studio William Cochran, Inc. 2009.~~

(b) In the event of death, the City will work with the designated heir(s) or successors of the Artist to assign the Artist's obligations and services under this Agreement to another artist provided that the City, in its sole discretion, approves of the new artist. If the parties cannot agree on another artist to complete the Artwork, the City may elect to terminate this Agreement. The Artist's estate shall retain all rights under Articles 4(e) and 5. ~~The Artwork and any~~

~~reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © Studio William Cochran, Inc. 2009.~~

(c) If the City elects to terminate this Agreement pursuant to this Section 16, all materials purchased for the project or installed on site shall be the property of the City, to the extent that the City pays for, or has paid for, such materials. The Artist or Artist's heirs/successors shall provide the City with comprehensive models and plans that will enable the City to complete the project. Artist and Artist's heirs/successors shall not be entitled to further compensation and shall not be required to refund to the City funds previously paid to the Artist. The Artist and his heirs and assigns shall retain all rights under Article 6. ~~The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: © Studio William Cochran, Inc. 2009, www.WilliamCochran.com. Artist or Artist's heirs/successors shall provide the City with accurate copyright information.~~

In the alternative, Artist or Artist's heirs/successors may elect to remit to the City a sum equal to all payments (if any) made pursuant to this Agreement, and retain ownership of all materials purchased and work done to date, and may sell or otherwise dispose of the Artwork and any product or material relating thereto at the discretion of Artist or Artist's heirs/successors.

17. REMOVAL OR DISASSEMBLAGE. The Artist understands that once accepted by the City the Artwork is owned by the City. As such, at some time in the future, the City may move the Artwork to another location or disassemble it. If that happens, the City assumes full responsibility for the moving and reserves the right to reinstall the artwork at a different site, or to dispose of the Artwork as the City deems appropriate. Such a determination is the sole right of the City. However, the City will send written notice via certified mail to the Artist at 7192

Meadowbrooke Drive, Frederick, MD 21702, or to such other address as Artist may provide to the City, thirty (30) days in advance of such action and will obtain the Artist's views regarding relocation or disposition of the Artwork.

18. DISPUTES. This Agreement is governed by the laws of the State of Maryland and applicable federal law, and all actions shall be brought in an applicable court in Montgomery County, Maryland, or in the United States Federal Court for the District of Maryland where such court has jurisdiction.

19. ENTIRE AGREEMENT. This Agreement contains the entire offer and agreement between the parties hereto, and they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

[signatures on next page]

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE

Claire Funkhouser
City Clerk

By:_____
Scott Ullery
City Manager

WITNESS:

STUDIO WILLIAM COCHRAN, INC.

By:_____

William Cochran, President

APPROVED AS TO FORM AND LEGALITY:

Sondra Block, Assistant City Attorney